

Agenda Item #10.A.



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS


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DATE: August 22, 2011

TO: Board Members

FROM: 
Angelina Martin
Enforcement Division Chief

SUBJECT: Proposed Regulatory Action to Implement Elements of the Consumer Protection Enforcement Initiative

STATEMENT OF ISSUE

In 2009, various media articles reported that most Department of Consumer Affairs (DCA) health care boards were taking over three years to complete the investigations and take appropriate disciplinary actions against licensees. As a result, the State and Consumer Services Agency (SCSA) conducted an internal review of all the health care board's enforcement programs and the DCA Division of Investigations (DOI). The SCSA found that most of the health care boards face significant complaint investigation backlogs and processing delays. The DCA Director was charged with reforming the current enforcement process for the health care boards.

The DCA reviewed the existing enforcement process and found systemic problems that limit the boards' abilities to investigate and act on cases in a timely manner. These problems range from legal and procedural challenges to inadequate resources. In response, the DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process at the healing arts boards. Once fully implemented, the DCA expects the healing arts boards to reduce the average enforcement completion timeline to between 12-18 months.

On February 17, 2010, SB 1111 was introduced by Senator Negrete McLeod and sponsored by the DCA to establish the Consumer Health Protection Enforcement Act and make enforcement processes more efficient. However, on April 22, 2010, the bill failed to make it out of the Senate Business, Professions and Economic Development Committee. On April 26, 2010, the DCA reported that CPEI would continue to be the Department's highest priority and believes that many provisions of SB 1111 can be adopted as regulations.

PROPOSED REGULATORY ACTION

At its September 16, 2010 Board Meeting, the Board approved draft proposed regulatory language to implement elements of CPEI and directed staff to prepare a rulemaking file for notice and comment. The notice of proposed regulations was published on March 25, 2011 and a public hearing was held on May 11, 2011.

Three written comments were received during the public comment period ending May 9, 2011 (see Attachment A) and one oral comment was received during the public hearing held on May 11, 2011. The oral comment received was from Ken Murch, California Association of Psychiatric Technicians (CAPT). Mr. Murch's oral comment was substantially the same as that received in a letter written by Tony Myers, CAPT President, dated April 29, 2011.

All comments received by the Board were considered and the originally noticed text was modified (see Attachment B). The wording "whenever it appears" was changed to "whenever evidence exists" in sections 2509 (VN) and 2568 (PT). Additionally, the text in subsection (c) of sections 2518.8 (VN) and 2576.8 (PT) was modified by deleting the wording "pending against the licensee" to clarify that a licensee is required to cooperate with *any* Board investigation.

A 15-day public comment period relative to the modified text commenced on August 12, 2011 and will end August 27, 2011. The comments received and the Board's responses will be included in the Final Statement of Reasons as part of the rulemaking file.

RECOMMENDATIONS:

1. The Board approve the regulatory proposal as revised on August 11, 2011, to add or amend Division 25 of Title 16, California Code of Regulations, Sections 2503, 2509, 2518.8, 2524.1 and 2524.4 (VN); and Sections 2563, 2568, 2576.8, 2579.11 and 2579.20 (PT);
2. Direct staff to submit the rulemaking file to the DCA and to the Office of Administrative Law (OAL) for final approval; and
3. Authorize the Executive Officer to make non-substantive changes as are required by the Director of the DCA and the OAL.

Attachment A – Written Comments Received

Attachment B -- Modified Proposed Regulatory Language

Agenda Item #10.A. - Attachment A Written Comments #1

From: Elliot Hochberg [mailto:elliotohochberg@gmail.com]
Sent: Friday, April 29, 2011 11:03 AM
To: Linda Ruyters
Cc: Alice Delvey-Williams
Subject: Proposed enforcement regulations - comments

Good morning. Please confirm receipt of this email with a reply. My comments are identical for both the proposed regulations for vocational nurses and psychiatric technicians. Therefore, I have included the proposed regulatory section numbers for both proposals together. My comments include one or more issues and recommendations for each set of proposed regulations reviewed. Thank you for the opportunity to comment on the proposals.
Elliot Hochberg

COMMENTS

Board of Vocational Nursing and Psychiatric Technicians (BVNPT) –
Proposed Enforcement Regulations

Section 2503 and 2563 – Delegation of Certain Functions.

Issue #1: These proposals provide for a more efficient disciplinary process for settlements with the most severe outcomes. There is little Board member voting discretion available on settlements for surrender or revocation. This lack of discretion is not only because of the severity. It is also because of the consequences of voting to make a change to any settlement. A vote to reject or discuss further any settlement, including those for revocation or surrender, delays the disciplinary action imposed to protect the public.

Under this proposed regulation, the Executive Officer (EO) approves certain types of negotiated settlements, making them effective sooner. It appears that the Board members will still vote to adopt, reject, or discuss further other types of settlements with less severe outcomes. The Initial Statement of Reasons and proposed regulations only clarify which settlements will be delegated for approval, not which ones that will be retained using the current voting process. Without regulatory clarification, it leaves a gap in knowledge for those consumers directly impacted by this.

Recommendation #1: Clarify in the proposed regulations which types of settlement cases will be retained under the current voting process by the Board members.

Issue #2: The regulatory proposals would also enable the Board's EO to approve settlement agreements for "interim suspension." This "interim suspension" settlement is different than the "Interim Suspension Order" described in Business and Professions Code (BPC) Section 494. A different choice of words might prevent potential confusion and inadvertent miscommunication. Alternatives might include settlement agreement for "voluntary" suspension instead of the word "interim."

Recommendation #2: Change the words “settlement agreement for interim suspension” to words that can easily be distinguished from the order obtained pursuant to BPC Section 494.

Issue #3: These proposed additions to the regulations permit the EO to delegate “in the absence of the Executive Officer from the office of the board.” “Absence from the office of the board” is terminology from the original regulation that is obsolete, given the use of telecommuting, and availability of methods to provide information electronically. Many such documents are already signed via fax.

Recommendation #3: Change the words “in the absence of the Executive Officer from the office of the board” to “when unavailable” or other words that convey the circumstances when the EO is incapable of acting on something.

Section 2509 and 2568– Evaluation of Applicants

I want to commend the BVNPT for recognizing the need to include provisions for the denial of licensure under proposed Sections 2509 and 2568. This provision is not present in some current proposals.

However, I do have some additional recommendations, for consistency with Business and Professions Code Section 820.

Issue #1:

The language in Section 821 for licensees states the following: “The licentiate’s failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate’s certificate or license.”

The language in this proposal for applicants in Section 2509(a) and 2568(a) states the following: “An applicant’s failure to comply with the requirement shall render his or her application *incomplete*.”

While this offers some protection, rendering a license application incomplete does not provide sufficient public information. Failure to comply with an examination for potential impairment affecting competency should not have the same outcome as any other incomplete licensing application. A failure to comply with such a requirement is of a much higher order than a failure to complete a part of the licensing application form, for example. However, both of these scenarios under these proposals would appear to have an equal outcome - rendering the application incomplete. *The enforcement and disciplinary equivalent for applicants with this type of noncompliance should be a denial of licensure.*

Another concern is that the applicant who failed to comply with an examination might be able to just go to another state to apply if the application in this state is only rendered incomplete. The same application requirement may not exist in the other state. It raises questions as to whether the failure to comply with the examination for potential impairment affecting competency in California can be shared with a board in another state. Conversely, could the failure to comply information be obtained by a board in another state if requested? In contrast, if formal charges (Statement of Issues) are filed for failure to comply, information becomes public for any interested party.

Recommendation #1: Change the language in the proposed regulation to make it consistent with the authority under Section 820 i.e. an applicant's failure to comply with taking the examination is grounds for denial of the license.

Issue #2: The proposed regulation does not include the process the board will use to require an examination for applicants. For licensees, there is a Petition and Order to Compel. The Petition and the Order to Compel maintains appropriate checks and balances. The Petition and Order for some boards has been referenced in and included as an attachment to accusations, which are public documents.

Requiring an applicant to take an examination for a possible impairment affecting competency is a very sensitive issue. Checks and balances must be assured at the highest level possible. As this is a proposed regulation, it should clarify the process used to require an examination.

Recommendation #2: The proposed regulations needs to add and clarify the process to be used to require applicants to take an examination.

Section 2524.1 and 2579.11 - Required Actions against Registered Sex Offenders

Issue: These proposed regulations provide for an important "absolute bar" to licensure. Absolute bars to licensure offer preemptive and preventative public protection.

There are other states that impose a substantial number of absolute bars to licensure in various ways. Imposing more absolute bars offers even greater preemptive and preventative public protection. Best regulatory practices in this area can be readily obtained. For example, there should be a proposal to impose an absolute bar for criminal mistreatment and financial exploitation of elder and dependent adults. This is an all too frequent issue, and does unfortunately include some health care professionals.

Additional absolute bars can provide some long term cost savings on new applicant matters that no longer have to be opened, investigated, referred to the Attorney General's Office, or have an administrative hearing, if contested. It would also expand on those ineligible to apply for reinstatement of a revoked license.

Recommendation: Introduce additional proposed regulations with absolute bars for greater preemptive and preventative public protection.

Agenda Item #10.A. - Attachment A
Written Comments #2



California Association of Psychiatric Technicians

B V N P T

2011 MAY -2 PM 4:49

April 29, 2011

Linda Ruyters, Administrative Analyst
BVNPT
2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833

Re: Comments from the California Association of Psychiatric Technicians

Dear Ms. Ruyters:

The California Association of Psychiatric Technicians (CAPT) fulfills two roles: Not only is it the elected exclusive representative of state-employed and related professional staff; it also is the professional organization representing all licensed psychiatric technicians throughout California. CAPT takes an active role in encouraging entry into the psychiatric technician profession and supports programs that achieve that objective. For over 25 years CAPT has spoken as the voice for psychiatric technicians in the State civil service. Therefore, changes in statutes, regulations and/or policies directly impacts those CAPT represents and well as those who are interested in a career as a psychiatric technician.

CAPT does not support the adoption of section 2568. This section authorizes the BVNPT to require applicants for the psychiatric technician license to submit to physical and/or mental exams as a condition for obtaining a license "if it appears the applicant may be unable to practice due to mental and/or physical illness."

The obvious questions are: Who determines whether an applicant may be unable to practice due to mental and/or physical illness so that a referral is necessary? Who determines what physician and/or psychologist is going to make the assessment of the applicant? Once that's determined, what is the standard that is going to be applied in deciding whether an applicant is unable to practice due to a mental and/or physical illness? Will those making the assessment have a clear understanding of the duties a psychiatric technician may perform? Additionally, even though the BVNPT is going to pay for the exam, how long will the process take? Finally, what is the avenue of "appeal" if an applicant is dissatisfied with the assessment result?

CAPT is not aware that there has been an increase in the number of applicants for licensure that evidence a need for a mental or physical exam as a condition for obtaining a psychiatric technician license. If the BVNPT has some statistics that show there is a significant number of applicants who would warrant a physical or mental exam, CAPT would certainly want to review

those numbers because obviously there is a problem at the various psychiatric technician training programs in accepting candidates with physical and/or mental problems.

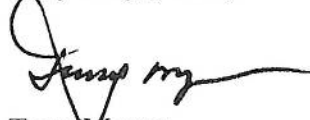
CAPT also is not persuaded that there is a need for section 2576.8 that adds additional grounds of unprofessional conduct. Again, what is the reason(s) for adding the additional grounds? Have there been a number of occasions where licensees or applicants have engaged in the proscribed behavior? Also, the new grounds raise additional questions. For example, what is a civil settlement agreement? Is a settlement agreement between a state agency and a psychiatric technician that is approved by the State Personnel Board a civil settlement agreement? What is meant by "lawfully requested documents under the licensee's control?" For example, when the BVNPT investigates a charge of criminal behavior and seeks documents from the licensee regarding that behavior, are documents housed at the court or in a police department "documents under the licensee's control? What are the standards for determining whether a licensee has failed to "cooperate and participate in a BVNPT investigation?" Who determines whether the "failure" does or does not infringe upon the licensee's constitutional or statutory privileges?

It appears to CAPT that section 2576.8 is likely to cause more problems than are solved by adoption of the section. Certainly, the "new" grounds of unprofessional conduct would seem to be included in those grounds that exist either in current statutes or regulations.

Finally, the BVNPT indicates that the "fiscal impact" of enacting these regulations will be minor. That is debatable. If the BVNPT refers a significant number of applicants for physical and/or psychological evaluations that is going to certainly increase the "fiscal impact" to the State. Additionally, is the "fiscal impact" going to result in an increase in the licensing fees paid by psychiatric technicians to renew licenses? What assurance is there that the cost of medical evaluations will not be passed on to licensed psychiatric technicians?

Unless there is a demonstrable, pressing need for sections 2568 and 2576.8 that CAPT is not aware of, CAPT opposes the adoption of these regulations as drafted.

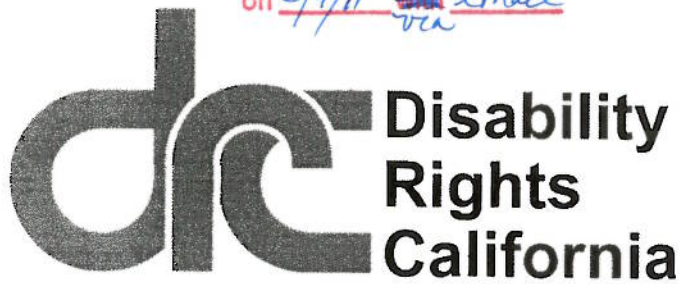
Very truly yours,

A handwritten signature in black ink, appearing to read "Tony Myers", with a long horizontal flourish extending to the right.

Tony Myers
State President, CAPT

BVNPT Received
on 5/9/11 with email
vca

Agenda Item #10.A. - Attachment A Written Comments #3



California's protection and advocacy system

BAY AREA REGIONAL OFFICE
1330 Broadway, Suite 500
Oakland, CA 94612
Tel: (510) 267-1200
TTY: (800) 719-5798
Toll Free: (800) 776-5746
Fax: (510) 267-1201
www.disabilityrightsca.org

May 9, 2011

Via email and U.S. Mail
Linda.ruyters@dca.ca.gov

Linda Ruyters, Administrative Analyst
2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833

Re: Comments re Proposed Regulation 16 CCR Sections 2509 and 2568

To Whom It May Concern:

Disability Rights California is the State of California's designated protection and advocacy agency for people with disabilities.¹ The agency provides counsel and direct representation in administrative and court proceedings, education and community outreach, and other services to Californians with all categories of disability, including but not limited to physical/orthopedic, sensory, cognitive and psychiatric disabilities. Disability Rights California provides assistance in many areas of law, including employment and professional licensing discrimination.

¹ Disability Rights California provides services pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §15001, PL 106-402; the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. §10801, PL 106-310; the Rehabilitation Act, 29 U.S.C. §794e, PL 106-402; the Assistive Technology Act, 29 U.S.C. §3011,3012, PL 105-394; the Ticket to Work and Work Incentives Improvement Act, 42 U.S.C. §1320b-20, PL 106-170; the Children's Health Act of 2000, 42 U.S.C. §300d-53, PL 106-310; and the Help America Vote Act of 2002, 42 U.S.C. §15461-62, PL 107-252, as well as state contracts and grants.

Linda Ruyters, Administrative Analyst
Re: Comments re Proposed Regulation 16 CCR Sections 2509 and 2568
May 9, 2011
Page 2 of 3

Thank you for this opportunity to comment on the proposed changes to 16 California Code of Regulation Sections 2509 and 2568. Disability Rights California has concerns with the standard under which an applicant may be required to be subjected to an evaluation or examination.

The Board of Vocational Nursing and Psychiatric Technicians (Board) is part of the California Department of Consumer Affairs, a state agency, therefore it is a public entity subject to Title II of the Americans with Disabilities Act ("ADA"), as amended in 2008 by the ADA Amendments Act of 2008 ("ADAAA"). Title II requires all public entities to ensure that:

no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

[See 42 U.S.C. § 12132]

The Title II regulations also contain specific provisions prohibiting discrimination in licensing. 28 C.F.R. § 35.130(b)(6). Specifically:

A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability.

[See 28 C.F.R. § 35.130(b)(6)]

As worded, the proposed changes allow the Board to require an applicant for a vocational or technician license to undergo an evaluation or examination if it appears that the applicant may be unable to practice due

Linda Ruyters, Administrative Analyst

Re: Comments re Proposed Regulation 16 CCR Sections 2509 and 2568

May 9, 2011

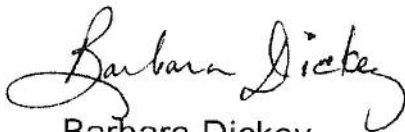
Page 3 of 3

to mental or physical illness. Disability Rights California feels that the language of the proposed regulation is unnecessarily subjective and likely to result in discrimination against persons with physical and mental disabilities.

The Courts have long recognized that subjective criteria are "ready mechanisms for discrimination...because they mask the influence of impermissible ... bias in making [employment] decisions." See *Antonio v Wards Cove Packing Co., Inc* (9th Circuit. 1987) 827 F.2d 439, 445-446, *rev'd on other grounds*, 490 U.S. 642 (1989) (Title VII). Moreover, because subjective criteria can reflect subconscious stereotypes and prejudices they can have "precisely the same effect as a system pervaded by impermissible intentional discrimination". See *Watson v. Ft. Worth Bank & Trust*, 487 U.S. 977 (1988). Here, the Board would be permitting opportunities for stereotypes to be used to require applicants with certain disabilities, actual or perceived, to be required to undergo an evaluation or examination.

We believe the Board can still address its institutional concerns by proposing a regulation that is limited to requiring evaluations or examinations only if the Board has objective evidence that the applicant may be unable to practice due to mental or physical illness. Substitution of an objective standard for the subjective one will help to prevent people with disabilities from being the targets of impermissible discrimination.

Sincerely,



Barbara Dickey
Associate Managing Attorney

Agenda Item #10.A. - Attachment B

Board of Vocational Nursing and Psychiatric Technicians Modifications of Proposed Regulatory Language Based on Public Comments Received

*Changes to the originally proposed language are shown by
double underline for new text and underline with strikeout for deleted text*

SPECIFIC LANGUAGE Revised August 11, 2011

Vocational Nursing Regulations

California Code of Regulations, Title 16, Division 25

1. Amend section 2503 to Article 1 to read as follows:

2503. Delegation of Certain Functions.

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the ~~businesslike~~ efficient dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in the absence of the executive officer from the office of the Board, the assistant executive officer.

Note: Authority cited: Section 2854, Business and Professions Code. Reference: Section 2847, Business and Professions Code.

2. Add section 2509 to Article 2 to read as follows:

2509. Evaluation of Applicants.

(a) In addition to any other requirements for licensure, whenever ~~it appears evidence exists~~ that an applicant for a license may be unable to practice safely because the applicant's ability to practice may be impaired due to mental illness, or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete.

(b) The report of the evaluation shall be made available to the applicant.

(c) If after receiving the evaluation report the Board determines that the applicant is unable to safely practice, the Board may deny the application.

NOTE: Authority cited: Section 2854, Business and Professions Code. Reference: Sections 820, 822, 2841.1, 2866, 2878, 2878.6, 2878.9, and 2879, Business and Professions Code.

3. Add section 2518.8 to Article 4 to read as follows:

2518.8. Unprofessional Conduct.

In addition to the conduct described in Section 2878(a) of the Code, “unprofessional conduct” also includes, but is not limited to, the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee’s practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee’s practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

NOTE: Authority cited: Section 2854, Business and Professions Code. Reference: Sections 490, 2841.1, 2878 and 2878.6, Business and Professions Code.

4. Renumber section 2524.1 of Article 4 to section 2524.5 and amend to read as follows:

~~2524.1.~~ 2524.5. Consumer Complaint Disclosure.

In reaching a decision on the disclosure of a consumer complaint under the Public Records Act (Government Code Section 6250 et seq.), the Board shall follow its "Consumer Complaint Disclosure Policy" which specifies the following:

(a) Public Access to Information – It is the policy of the Board of Vocational Nursing and Psychiatric Technicians (hereafter "Board") that information concerning individuals licensed by this agency be available to members of the public. Among the principal functions of the Board is the investigation of complaints against its licensees to determine whether there is cause for disciplinary action. Information regarding actions taken by the Board in the disposition of such complaints is readily accessible to the consuming public.

(b) Complaint Information System – The Board maintains a system designed to provide information regarding complaints and disciplinary actions against its licensees and information regarding their license status.

(c) Information to be Provided Regarding Complaints – In disclosing the existence of a consumer complaint, the Board will do so in a manner that will not reveal the identity of the complainant. The Board shall disclose details of a consumer complaint if the complaint is substantiated through investigation and/or an Accusation or Statement of Issues is filed. The Board shall disclose the following consumer complaint information to the public, upon written request:

(1) The number of complaints which have been found by the Board to be violations of the licensing law or regulations; and

(2) With respect to each complaint, the following information:

(A) Its date of receipt;

(B) A summary of the violation(s);

(C) Its disposition, by indicating whether the complaint:

(1) Has been or will be referred to formal disciplinary action.

(2) Has been found to involve a minor violation not in itself meriting disciplinary action;

(3) Has been disposed of through any action taken, formal or informal.

(3) Comparative data considered by the Board to be informative to consumers, which could include the average number of complaints received against licensees in a given region, locality or area of practice.

(4) A general disclaimer, if any, as the Board may deem appropriate.

(d) A consumer complaint may not be disclosed if one of the following conditions exists:

(1) The complaint is deemed without merit.

(2) Board jurisdiction cannot be established.

(3) The complaint is unrelated to professional conduct.

(4) The complaint involves a non-consumer matter.

(5) Disclosure is prohibited by statute or regulation.

(6) Disclosure might endanger or injure the complainant.

(7) Disclosure might compromise the investigation and/or prosecution.

(e) Information to be Provided Regarding Disciplinary Actions – The Board maintains records showing the disciplinary history of all current license holders and will provide to the public, upon request, whether a current license holder has ever been disciplined and, if so, when and for what offense. A copy of documents related to that action including the

accusation, proposed decision, stipulation and/or final decision will be provided to the public upon ~~written~~ request.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 6253.4, Government Code. Reference: Sections 2875, 2876, 2878, 2878.1 and 2878.5, Business and Professions Code; and Sections 6252, 6253, 6253.2, 6253.4, 6254, 6255, 6260, 11503 and 11504, Government Code.

5. A new section 2524.1 is added to Article 4 to read as follows:

2524.1. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Section 2854, Business and Professions Code. Reference: 2841.1, 2866, 2876, 2878, 2878.6, and 2878.7

Board of Vocational Nursing and Psychiatric Technicians

Proposed Language

Psychiatric Technician Regulations

California Code of Regulations, Title 16, Division 25

1. Amend section 2563 Article 1 to read as follows:

2563. Delegation of Certain Functions.

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the ~~businesslike~~ efficient dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in the absence of the executive officer from the office of the Board, the assistant executive officer.

Note: Authority cited: Section 4504, Business and Professions Code. Reference: Section 4503, Business and Professions Code.

2. Add section 2568 to Article 2 to read as follows:

2568. Evaluation of Applicants.

(a) In addition to any other requirements for licensure, whenever it appears evidence exists that an applicant for a license may be unable to practice safely because the applicant's ability to practice may be impaired due to mental illness, or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete.

(b) The report of the evaluation shall be made available to the applicant.

(c) If after receiving the evaluation report the Board determines that the applicant is unable to safely practice, the Board may deny the application.

NOTE: Authority cited: Section 4504, Business and Professions Code. Reference: Sections 820, 822, 4501.1, 4511, 4521, 4521.1, 4521.6, 4522, and 4523, Business and Professions Code.

3. Add section 2576.8 to Article 4 to read as follows:

2576.8. Unprofessional Conduct.

In addition to the conduct described in Section 4521(a) of the Code, “unprofessional conduct” also includes, but is not limited to, the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee’s practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee’s practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

NOTE: Authority cited: Section 4504, Business and Professions Code. Reference: Sections 490, 4501.1 4521, and 4523, Business and Professions Code.

4. Renumber section 2579.11 of Article 4 to section 2579.20 and amend as follows:

~~2579.11.~~ 2579.20. Consumer Complaint Disclosure.

In reaching a decision on the disclosure of a consumer complaint under the Public Records Act (Government Code Section 6250 et seq.), the Board shall follow its “Consumer Complaint Disclosure Policy” which specifies the following:

(a) Public Access to Information – It is the policy of the Board of Vocational Nursing and Psychiatric Technicians (hereafter “Board”) that information concerning individuals licensed

by this agency be available to members of the public. Among the principal functions of the Board is the investigation of complaints against its licensees to determine whether there is cause for disciplinary action. Information regarding actions taken by the Board in the disposition of such complaints is readily accessible to the consuming public.

(b) Complaint Information System – The Board maintains a system designed to provide information regarding complaints and disciplinary actions against its licensees and information regarding their license status.

(c) Information to be Provided Regarding Complaints – In disclosing the existence of a consumer complaint, the Board will do so in a manner that will not reveal the identity of the complainant. The Board shall disclose details of a consumer complaint if the complaint is substantiated through investigation and/or an Accusation or Statement of Issues is filed. The Board shall disclose the following consumer complaint information to the public, upon written request:

(1) The number of complaints which have been found by the Board to be violations of the licensing law or regulations; and

(2) With respect to each complaint, the following information:

(A) Its date of receipt;

(B) A summary of the violation(s);

(C) Its disposition, by indicating whether the complaint:

(1) Has been or will be referred to formal disciplinary action.

(2) Has been found to involve a minor violation not in itself meriting disciplinary action;

(3) Has been disposed of through any action taken, formal or informal.

(3) Comparative data considered by the Board to be informative to consumers, which could include the average number of complaints received against licensees in a given region, locality or area of practice.

(4) A general disclaimer, if any, as the Board may deem appropriate.

(d) A consumer complaint may not be disclosed if one of the following conditions exists:

(1) The complaint is deemed without merit.

(2) Board jurisdiction cannot be established.

(3) The complaint is unrelated to professional conduct.

(4) The complaint involves a non-consumer matter.

(5) Disclosure is prohibited by statute or regulation.

(6) Disclosure might endanger or injure the complainant.

(7) Disclosure might compromise the investigation and/or prosecution.

(e) Information to be Provided Regarding Disciplinary Actions – The Board maintains records showing the disciplinary history of all current license holders and will provide to the public, upon request, whether a current license holder has ever been disciplined and, if so, when and for what offense. A copy of documents related to that action including the accusation, proposed decision, stipulation and/or final decision will be provided to the public upon written request.

Note: Authority cited: Section 4504, Business and Professions Code; and Section 6253.4, Government Code. Reference: Sections 4520, 4521 and 4521.2, Business and Professions Code; and Sections 6252, 6253, 6253.2, 6253.4, 6255, 6260, 11503 and 11504, Government Code.

5. A new section 2579.11 is added to Article 4 to read as follows:

2579.11. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Section 4504, Business and Professions Code. Reference: 4501.1, 4511, 4521.6, 4522, 4523, and 4524.